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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/761,401	01/22/2004	Ola Olofsson	TPP 31436DIV	3311
<div>7590 07/13/2007 STEVENS, DAVIS, MILLER &amp; MOSHER, L.L.P. Suite 850 1615 L Street, N.W. Washington, DC 20036</div>			<div>EXAMINER SELF, SHELLEY M</div>	
			<div>ART UNIT 3725</div>	<div>PAPER NUMBER</div>
			<div>MAIL DATE 07/13/2007</div>	<div>DELIVERY MODE PAPER</div>

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/761,401

Applicant(s)

OLOFSSON, OLA

Examiner

Shelley Self

Art Unit

3725

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 24 April 2007.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 21-25 and 27-31 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 21-25 and 27-31 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Response to Amendment*

The amendment filed on April 24, 2007 has been considered but is ineffective to overcome the prior art and an action on the merits follows.

### *Drawings*

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the *angle not possible by milling* (clm. 28, 31), *burr-free broached portion* (clm. 29) and *geometry not capable of being formed by milling* (clm. 30) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet"

Art Unit: 3725

pursuant to 37 CFR 1.121(d). If the examiner does not accept the changes, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 24 and 27- 31 are rejected under 35 U.S.C. 102(b) as being anticipated by Moriau et al. (6,006,486). Moriau discloses a floor comprising a first board comprising an edge, the edge comprising a tongue (9); a second board comprising an edge, the edge comprising a groove, the groove defined by an opening (81) in the edge and an inner most portion; the groove further comprising a depression (fig. 23) positioned in a portion distal the innermost portion wherein the first and second boards are joined by the tongue and grooves.

As to the recitation, "...the broached portion having angles sharper than possible by milling", (clm. 28) this is treated as a product-by-process limitation, as, the claim positively defines either the tongue or groove to have both milled and broached portions and the tongue and groove to form a joint. Examiner notes that either the tongue or groove, having a broached portion having angles sharper than possible by milling, does not positively define an end resultant product, i.e. surface comprised of a plurality of boards having a joint connection between the boards that is patentably distinct from the prior art of record. Further examiner

Art Unit: 3725

notes the process by which the end result product (surface comprised of plurality of boards having a joint connection between the boards) is made is not germane to the patentability of the end resultant product.

Regarding claims 24 and 27-30, Examiner notes, *“wherein at least one of the tongue and groove comprise both a milled and a broached portion”*, *“the groove comprises both milled and broached portions”*, *“wherein the polymeric material is an extrudate before being milled”*, *“wherein at least one of the tongue and the groove is formed by broaching an impregnated milled portion”*, *“wherein at least one of the tongue and the groove comprising a burr-free broached portion”* and *“wherein at least one of the tongue and groove comprise a broached portion...not capable of being formed by milling”* to be product-by-process limitations.

Accordingly, because Serino clearly discloses a (product) first and second boards having a tongue and groove joint, the process by which the tongue and groove of the boards is formed into a joint (i.e., milled, broached, sharp angles, burr-free & geometry not capable of being formed by milling) or extrusion before milling are not germane to the patentability of the claimed invention. Additionally, the claimed end resultant product (at least two boards having a tongue and groove joint/connection to create a surface) does not patentably distinguish over the prior art of record.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Art Unit: 3725

Claims 21-23 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moriau et al. (6,006,486) in view of Serino et al. (6,357,197). With regard to claims 21 and 23, Moriau does not disclose the tongue and groove comprise a milled polymeric material, the polymeric . Serino discloses the tongue and groove both to comprise a polymeric material. Examiner notes the adhesive (19) between the tongue and groove to be a polymeric material because it consists of a thermoplastic. Applicant's disclosure states an admitted prior art that, thermoplastic is a type of polymeric material. Accordingly because Serino discloses board (17) to be comprised of a thermoplastic material and use of an adhesive that is also a thermoplastic material, Serino anticipates a tongue and groove comprised of polymeric material.

With regard to claim 22, Serino discloses the tongue (16) to be glued (18) to the groove/board (13). Accordingly it would have been obvious to the skilled artisan to construct Moriau such that the tongue is glued to the groove for efficiently securing the tongue and groove joint as taught by Serino.

With regard to claim 23, Serino discloses a polymeric material (col. 3, lines 35-50), Examiner notes a thermoplastic polymer to be a polymer material.

With regard to claim 25, Moriau and Serino disclose wherein at least one of the first board and the second board comprises a core, the core being formed from wood fiber board (Moriau col. 3, lines 14-17, 35-37).

### ***Response to Arguments***

Applicant's arguments filed April 24, 2007 have been carefully considered but they are not persuasive. Applicant's arguments are drawn to the failure of the prior art, Serino et al. to

Art Unit: 3725

teach or disclose a broached portion. Applicant argues that Serino does not teach the structural features as claimed, i.e., the angles, the geometry and the being burr-free. Examiner agrees that Serino fails to disclose a floor; however in response the "*broached portion*", *the angles, geometry and burr-free recitations*, Examiner notes these recitations are made in the form of process steps, however the claimed invention is clearly drawn to a product, i.e., floor. The floor including a first board having a projecting a tongue and a second board having a groove including a depression. The method or process steps by which either the tongue or groove/depression are formed within the board edges are not given patentable weight within the product claim, because the end resultant product is a floor joined via a tongue and groove connection/joint. Accordingly the process steps are not germane to the patentability of the end result product. Therefore a rejection is made in view of Moriau and Serino et al.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,


Art Unit: 3725

however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shelley Self whose telephone number is 571-272-4524. The examiner can normally be reached on 8:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Derris Banks can be reached on 571-272-4419. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
/Shelley Self/  
Primary Examiner  
Art Unit 3725

June 28, 2007